IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5436 OF 1995

Yashwant Vidyapeeth, Karad ..Petitioner

Versus

1. The State of Maharashtra & Ors..Respondents

Mr.A.M.Joshi and Mr.S.D.Rayrikar for the petitioner

Mr.Y.D.Mulani, A.G.P. for respondent nos.1 and 2

CORAM: A.P.SHAH &
S.U.KAMDAR, JJ

DATED: 30TH AUGUST, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J.):

1. By the present petition, the petitioner is challenging the order dated 27th & 28th July 1995 passed by the Education Officer, Zilla Parishad, Satara. By the said order, the Education Officer has revoked the earlier order dated 16th December 1993. Consequently, the 3rd respondent has been repatriated to the petitioner school. Some of the material facts of the present case are briefly

stated as under:

2. The petitioner is a public charitable trust and inter alia running an educational institution in the District of Satara. Respondent no.2 is the Education Officer, Zilla Parishad, Satara. Respondent no.3 is one of the teachers who was serving with the petitioner institution in the capacity of Assistant Teacher in a school known as Indira Kanya Prashala. The said respondent no.3 was declared as a surplus teacher and consequently the respondent no.3 was retrenched from the institution of the petitioner.

3. In the year 1993-94, the respondents granted approval to the number of teachers. However, there was a reduction in respect of some of the divisions and therefore depending upon workload some of the teachers were declared as surplus teachers. In the light thereof, the petitioner institution followed a seniority list and proposed a retrenchment of two teachers namely Mr.Shikalgar and 3rd respondent herein. The respondent no.3 was thus declared as

surplus. The Education Officer by his order dated 16th December 1993 granted approval declaring the 3rd respondent as surplus. The Education Officer further provided that the said respondents should be accommodated in another school known as Shri Bramhendraswami Vidyalaya, Dhavadshi, District Satara. By the said order dated 16th December 1993, the Education Officer, Zilla Parishad transferred the services of the 3rd respondent to the said other school.

4. The 3rd respondent thereafter filed a writ petition in this Hon'ble Court challenging the said order dated 16th December 1993 inter alia on the ground that the retrenchment order is motivated and not in consonance with the provision of the Act and Rules. The said Writ Petition though was admitted no interim relief was granted. However, two years after the 3rd respondent's retrenchment the new incumbent education officer passed the impugned order dated 27th and 28th July 1995 reverting the petitioner back to the 3rd respondent school. Thereupon the 3rd respondent has withdrawn the writ

petition filed by her in this Hon'ble court challenging the earlier order dated 16th December 1993. At the time of admission of the present Writ Petition this court has granted interim relief staying the implementation of the said order dated 27th and 28th July 1995 however it is made clear that if there is any vacancy to be filled in the petitioner institution then the 3rd respondent will be considered for the appointment by the petitioner. In the meantime, it was made clear that the government will be at liberty to offer appointment to the 3rd respondent in another school. The said interim order is in operation till today.

5. We have heard the parties and we are of the view that the respondent no.3 was declared as surplus teacher in 1996 by the petitioner institution and the necessary approval was also granted by the authorities. We are further of the view that since the approval was granted as far back as 16th December 1993 it was not open for the authorities suddenly after a period of almost 2

years to reopen the case and decide to bring back the respondent no.3 in the petitioner institution. We are also of the further view that once she was surplus and absorbed in another school her rights to the post in the petitioner institution comes to an end. In the light of the said fact it was not open for the Education Officer i.e. respondent no.2 herein to reopen the case and send back the respondent no.3 to the said parent institution. The order of the 2nd respondent is ex-facie illegal and the same is required to be interfered with. Accordingly, we quash and set aside the order dated 27th and 28th July 1995. However, we make it clear that in accordance with the interim order passed by this court 3rd respondent will be entitled to be considered for the appointment in the petitioner institution as and when the vacancy is available. We dispose of the petition accordingly. However, there shall be no order as to costs.

Parties to act on a copy of this order duly authenticated by the Court Stenographer.